App.), 212 S. W. 986. But this does not avoid a negotiable note in favor of one who has authorized the alteration. N. I. L. sec. 124. It has been held that the signing of a note readily severable from a contract impliedly authorizes the payee to detach and negotiate it. *New Bank v. Kleiner* (1901) 112 Wis. 287, 87 N. W. 1090; *contra, Stephens v. Davis* (1886) 85 Tenn. 271, 2 S. W. 382. Even an express authorization in the contract, as in the principal case, is not binding where the signature is obtained by fraudulent representations. *Stevens v. Pearson* (1917) 138 Minn. 72, 163 N. W. 769. And where there is a parol agreement that the note shall not be severed until performance of the contract, it avoids the note entirely, as against the severer, to sever it before performance. *Holdsworth v. Blyth & Fargo Co.* (1915) 23 Wyo. 52, 146 Pac. 603. However, under the above section of the N. I. L. an altered note can be enforced according to its original tenor by a holder in due course, not a party to the alteration, and the mere fact that the edge of a note shows marks of having been attached to another paper is not sufficient to put a taker on inquiry. *Iowa City State Bank v. Milford* (1917, Tex. Civ. App.) 200 S. W. 883; *Landon v. Huston Drug Co.* (1916, Tex. Civ. App.) 190 S. W. 534 The applicability of the section would seem to be conditioned on the existence of a negotiable note, as such, before any alteration. But in the absence of express or implied authority to detach the note-form, the whole paper can only be considered as one instrument, usually a conditional contract of sale, the obligation on which is discharged by the material alteration. See Anson, *Contract* (3d Am. ed. by Corbin, 1919) 489. Since the duty of the party who has promised to pay is thus discharged before any part of the paper ever became operative as a negotiable instrument, the transferee gets nothing by the purported negotiation. But the convenience of having a note on the same sheet with a contract or order for which it is given is manifest. Unless the perforations are obviously part of a design to defraud, it would seem sound construction for the courts, even in the absence of such express authorization as was given in the instant case, to imply a privilege and power in the payee to tear off the note-form and thereby to render it a negotiable instrument. And even where such *privilege* is negatived by the contract, still the same policy which protects *bona fide* holders in general should operate to give the payee a *power so to detach,* wherever the maker signed the note-form with due opportunity to know its nature.

CONFLICT OF LAWS—DEATH STATUTES—LAW GOVERNING DISTRIBUTION OF DAMAGES RECOVERED.—A resident of New York was fatally injured in Pennsylvania. The Pennsylvania death statute awards damages to the "husband, widow, children, or parents of the deceased" and provides "that the sum so recovered shall go to them in the proportion they would take his or her personal estate in case of intestacy." Under the Pennsylvania statute of distributions both parents would take; under the New York statute of distributions the father only. An action was brought under the Pennsylvania death statute. *Held,* that the father alone was entitled to the damages as the sole domiciliary distributee. *Pennsylvania R. R. v. Levine* (Jan. 14, 1920) C. C. A. 2d, Oct. Term, 1919, No. 75.

The principal case, in accordance with the unanimous view, holds the death statute of the *locus delicti* decisive as to the beneficiaries and their respective shares. *Re Coe* (1906) 130 Iowa, 307, 106 N. W. 743, 4 L. R. A. (N. S.) 814, note. Sometimes this statute expressly refers to the local statute of distributions. *Droneuburg v. Harris* (1908) 108 Md. 597, 71 Atl. 81; *Hartness v. Pharr* (1903) 133 N. C. 566, 45 S. E. 901. In the case of certain federal statutes the actual course of intestate succession is indicated with equal clearness. *Hutchinson Investment Co. v. Caldwell* (1894) 152 U. S. 65, 14 Sup. Ct. 504 ("heirs"); *Blagge v. Balch* (1896) 162 U. S. 439, 16 Sup. Ct. 853; but see *Seaboard Air Line R. R. v. Kenney* (1916) 240 U. S. 489, 36 Sup. Ct. 458. The local scheme of

distribution, rather than the domiciliary course of distribution, is sometimes accepted by the courts without consideration of the alternative construction. *Stangeland v. Minn. St. P. & S. S. M. R. R.* (1908) 105 Minn. 224, 117 N. W. 386; *Whitley v. Spokane etc. R. R.* (1913) 23 Ida. 642, 132 Pac. 121. In other cases the actual, or domiciliary course of distribution has been expressly rejected, although in evident disregard of the ambiguity of construction involved. *Stoeckman v. Terre Haute etc. R. R.* (1884) 15 Mo. App. 503; *McDonald v. McDonald's Adm'rs* (1894) 96 Ky. 209, 28 S. W. 482; *Bolinger v. Beacham* (1910) 81 Kan. 746, 106 Pac. 1094; *Re Coe, supra.* On the other hand the words "shall be disposed of as personal property belonging to the estate of the deceased" have been held to refer to the actual distribution as determined by the domiciliary law, and not to the local scheme of distribution. *Hartley v. Hartley* (1905) 71 Kan. 691, 81 Pac. 505. The opinion in the principal case proceeds upon the assumption that the local statute of distributions is referred to, but in reliance upon the provision of the latter excluding from its operation decedents domiciled without the Commonwealth concludes that the domiciliary statute of distributions is applicable. This provision, merely enacting as it does the prevailing rule of conflict of laws applicable to intestate succession, seems irrelevant with respect to the construction of the death statute. The conclusion reached, however, may be well defended, as against the prevailing view, by the direct process of construction of the death statute itself, which by its terms appears to refer to the domiciliary course of intestate succession rather than to the local statutory scheme of distribution.

CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES CLAUSE—INCOME TAX ON RESIDENTS AND NON-RESIDENTS.—The New York state income tax law which taxed the net income of residents and that of non-residents derived from all their property and every business or occupation in the state, granted certain exemptions to resident taxpayers only. The complainant, a Connecticut corporation doing business in New York and having employees residing out of the state but occupied in the complainant's business in New York, brought a bill to restrain the enforcement of the act. *Held,* that the injunction should be allowed. *Travis v. The Yale & Towne Mfg. Co.* (1920) 40 Sup. Ct. 228.

An Oklahoma statute provided that every person in the state should be liable for an annual tax on his entire income arising from all sources, and that a like tax be levied upon the entire net income from all property owned and from every business carried on in the state by non-residents. The act permitted residents to deduct from their gross income losses sustained in and outside of the state, while non-residents could deduct only those losses incurred in the state. The complainant, a resident of Illinois, operating oil wells in Oklahoma, brought a bill to enjoin the enforcement of this act. *Held,* that the bill should be dismissed. *Shaffer v. Carter* (1920) 40 Sup. Ct. 221.

In the second case the Court has apparently entirely receded from its former unfortunate position that a tax on the income derived from property was the legal equivalent of a direct tax on the property from which the income was derived. *Pollock v. Farmers Loan & Trust Co.* (1895) 157 U. S. 429, 15 Sup. Ct. 673; see Seligman, *The Income Tax* (1914) ch. 5. It correctly recognizes that income taxation is directed at the privilege of creating and enjoying income; and the power to levy the tax is based upon the protection which the person receives in his enjoyment of it or in his conduct of the business which helps create it. And since the taxation of non-residents for the privileges exercised under the protection of the levying state has long been upheld in the form of inheritance and occupation taxes, there would seem to be no doubt of the power to tax non-residents as in the instant case. See *Magoun v. Illinois etc. Bank*